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4 VIRAL DRM LLC,

5 Plaintiff,

6 v.

7 MARYNA LIETUCHEVA,

8 Defendant.

9 Case No. 3:23-cv-04300-JSC

10 **ORDER RE: PLAINTIFF'S MOTION  
11 FOR ALERNATIVE SERVICE**

12 Re: Dkt. No. 79

13 Plaintiff Viral DRM LLC syndicates and licenses video content of extreme weather events  
14 from around the world. Defendant, a citizen of Ukraine, allegedly downloaded and copied  
15 Plaintiff's copyrighted materials from YouTube, and then re-uploaded infringing versions of  
16 Plaintiff's copyrighted media content to her YouTube channel(s). Plaintiff seeks leave to serve  
17 Defendant via email and posting on a designated website. (Dkt. No. 79.) After carefully  
18 considering Plaintiff's motion and the relevant legal authority, the Court concludes oral argument  
19 is unnecessary, *see* Civ. L.R. 7-1(b), and DENIES WITHOUT PREJUDICE the motion for  
20 alternative service.

21 **BACKGROUND**

22 Viral DRM alleges Maryna Lietucheva operates the YouTube Channel EXTREME  
23 WEATHER & NATURAL DISASTERS. (Dkt. No. 71 at ¶ 25.) Defendant is alleged to have  
24 “downloaded Viral DRM’s Works, [] edited the Works, removed Viral DRM’s copyright  
25 management information, and then uploaded infringing versions of Viral DRM’s Works to  
26 YouTube.” (*Id.* at ¶ 27.) Defendant did so “to advertise, market and promote their YouTube  
27 channel, grow their YouTube channel subscriber base, earn money from advertising to their  
28 YouTube subscribers, and engage in other money-making business activities using Viral DRM’s

1 copyrighted media content.” (*Id.* at ¶ 28.) Viral DRM notified YouTube and Defendant of the  
2 allegedly infringing behavior by filing DMCA take-down notices, but Defendant responded with  
3 false and misleading information. (*Id.* at ¶¶ 44-45.)

4 After filing this action, Plaintiff was granted leave to subpoena Google to obtain  
5 information sufficient to identify the individual operating Defendant’s YouTube channel. (Dkt.  
6 No. 35.) Plaintiff now seeks leave to serve Defendant through alternative email service to the  
7 email address Google provided in response to the subpoena as well as by website posting. (Dkt.  
8 No. 79.) Plaintiff contends “allowing e-mail service in the present case is appropriate and  
9 comports with constitutional notions of due process, particularly given Lietucheva’s decision to  
10 conduct her illegal businesses using the Internet and utilizing e-mail as a primary means of  
11 communication.” (Dkt. No. 79 at 11.)

## 12 DISCUSSION

13 Federal Rule of Civil Procedure 4(f) provides the applicable authority for serving an  
14 individual in a foreign country. Under Rule 4(f)(3), courts can order service through a variety of  
15 methods, “including publication, ordinary mail, mail to the defendant’s last known address,  
16 delivery to the defendant’s attorney, telex, and most recently, email[,]” so long as the method of  
17 service is not prohibited by an international agreement. *Rio Props., Inc. v. Rio Intern. Interlink*,  
18 284 F.3d 1007, 1016 (9th Cir. 2002) (citation omitted). “However, the fact that an alternative  
19 method of service is not prohibited by international agreement does not mean that the plaintiff is  
20 entitled to use such a method under Rule 4(f)(3).” *Keck v. Alibaba.com, Inc.*, 330 F.R.D. 255,  
21 257–58 (N.D. Cal. 2018). It is within a court’s “sound discretion” to determine whether “the  
22 particularities and necessities of a given case require alternate service of process under Rule  
23 4(f)(3).” *Rio Properties*, 284 F.3d at 1016.

24 To comport with due process, alternate service of process must be “reasonably calculated  
25 to apprise interested parties of the pendency of the action and afford them an opportunity to  
26 present their objections.” *Id.* at 1016–17 (citation omitted). Service by email may be proper when  
27 (1) international agreement does not prohibit service by email, and (2) service by email is  
28 reasonably calculated to provide actual notice to the defendant. *See D.Light Design, Inc. v. Boxin*

1     *Solar Co.*, No. C-13-5988 EMC, 2015 WL 526835, at \*1 (N.D. Cal. Feb. 6, 2015) (collecting  
2 cases).

3              International agreement does not prohibit service by email here. The Hague Service  
4 Convention governs because the United States and Ukraine are both parties to this multilateral  
5 treaty. *See Hague Service Convention Status Table*,  
6 <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last visited Apr. 11, 2024).  
7 The Convention’s language is mandatory “in all cases, in civil or commercial matters, where there  
8 is occasion to transmit a judicial or extrajudicial document for service abroad.” *Volkswagenwerk v.*  
9 *Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988) (internal quotation marks omitted). The  
10 Convention authorizes service in several ways, including (a) through a receiving country’s central  
11 authority, (b) by diplomatic and consular agents, through consular channels, on judicial officers in  
12 the receiving country, or direct service by postal channels, unless the receiving country objects,  
13 and (c) by additional methods of service that a signatory country may designate within their  
14 borders either unilaterally or through side agreements. *Facebook, Inc. v. 9 Xiu Network*  
15 (*Shenzhen*) *Technology Co., Ltd.*, 480 F. Supp. 3d 977, 980 (2020). “Nothing in the Hague  
16 Convention itself prohibits alternative service by email, when such service is directed by a court.”  
17 *See Google LLC v. Does 1-3*, No. 23-CV-05823-VKD, 2023 WL 8851619, at \*2 (N.D. Cal. Dec.  
18 21, 2023) (collecting cases).

19              Plaintiff, however, has not made an adequate showing service by email comports with due  
20 process. As a threshold matter, Plaintiff has not identified the email address(es) it intends to use to  
21 serve Defendant. Plaintiff indicates it plans to use the email address Google provided in response  
22 to a subpoena, but it has not attached a copy of Google’s response. *See, e.g., Google*, 2023 WL  
23 8851619, at \*2 (relying on Google subscriber records submitted with the motion for alternative  
24 service demonstrating the accounts were active and recently accessed to demonstrate service by  
25 email was “likely to reach defendants and is reasonably calculated to provide them actual notice of  
26 this action.”).

27              Nor has Plaintiff provided evidence the email address Defendant provided Google is likely  
28 to be legitimate. Plaintiff contends Defendant must provide Google “a valid electronic means to

1 contact her” “in order to communicate with Google, receive notice of DMCA takedowns, submit  
2 counter notices, receive payment advices, and communicate with YouTube concerning her  
3 YouTube channel,” but Plaintiff alleged in the complaint the information in Defendant’s  
4 counter notice was fraudulent. (*Compare* Dkt. No. 79 at 7 with Dkt. No. 71 at ¶¶ 45-46.) The  
5 counter notice indicates EXTREME WEATHER & NATURAL DISASTERS is registered to a  
6 Kevin MacLeod who lives in Birmingham, AL and uses the email address [lety4evam@gmail.com](mailto:lety4evam@gmail.com).  
7 (Dkt. No. 71-3 at 12.) Given Plaintiff named Ms. Lietucheva and not Mr. MacLeod as a  
8 defendant, it appears Plaintiff contends this information is inaccurate, but Plaintiff does not  
9 explain this or provide evidence Google provided a different email address which it used to  
10 communicate with Ms. Lietucheva.

11 Nor has Plaintiff provided other evidence demonstrating service by email is likely to reach  
12 Defendant. For example, Plaintiff has not provided evidence it attempted to communicate with  
13 Defendant at the [lety4evam@gmail.com](mailto:lety4evam@gmail.com) email address or another email address to ensure the  
14 address is legitimate. *See, e.g., F.T.C. v. Pecon Software Ltd.*, No. 12 CIV. 7186 PAE, 2013 WL  
15 4016272, at \*5 (S.D.N.Y. Aug. 7, 2013) (“Service by email alone comports with due process  
16 where a plaintiff demonstrates that the email is likely to reach the defendant.”); *Hillbroom v.*  
17 *Lujan*, 2010 WL 11515374, at \*2 (C.D. Cal. May 3, 2010) (permitting service of foreign  
18 individual by email where individual used the subject email address to communicate with  
19 counsel); *Goes Int’l, AB v. Dodur Ltd.*, No. 14-CV-5666, 2015 WL 1743393, at \*3 (N.D. Cal. Apr.  
20 16, 2015) (same). While Plaintiff has previously indicated it was concerned Defendant might  
21 change ownership of the YouTube channel if Plaintiff provided notice of this action, the motion  
22 for alternative service does not discuss this issue. (Dkt. No. 26-5 at ¶¶ 14-15.)

23 Finally, while the motion repeatedly references Defendant’s email address in the singular,  
24 it also states “[b]ased upon plaintiff’s investigation, Lietucheva has multiple forms of electronic  
25 means of contact, demonstrating that this means of contact is not just effective, but the most  
26 reliable means of communicating with Lietucheva, and consequently, the most reliable means of  
27 providing Lietucheva with notice of this action.” (Dkt. No. 79 at 10 (citing Rollin Decl. ¶¶ 7-8).)  
28 Mr. Rollin’s declaration, however, only refers to Defendant’s “email address.” It is unclear if this

1 is a typographical error or if Ms. Lietucheva has multiple email addresses at which Plaintiff should  
2 attempt service.

3 In sum, Plaintiff's motion for alternative service fails to satisfy Rule 4(f) and constitutional  
4 due process.

5 **CONCLUSION**

6 For the reasons stated above, the Court DENIES WITHOUT PREJUDICE Plaintiff's  
7 motion to serve Defendant by alternative means.

8 This Order disposes of Docket No. 79.

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10 **IT IS SO ORDERED.**

11 Dated: April 11, 2024

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15 JACQUELINE SCOTT CORLEY  
16 United States District Judge  
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